



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

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DA-07-3985

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

## PUBLIC NOTICE

Released: September 21, 2007

### FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

**Baldwin Broadcasting Company WZEW (FM)** – Request for waiver of FY 2006 regulatory fee. **Granted** (September 19, 2007) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd, 12,759, 12761-62 (1995)]

**BDHLR, LLC** - Request for waiver of application fees. **Granted** (August 1, 2007) [See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 5 FCC Rcd 3558, 3572-73 (1990)]

**Cbeyond Communications, LLC** – Request for waiver of FY 2006 regulatory fee late payment penalty. **Denied** (September 18, 2007) [See 47 C.F.R. § 1.1164; Assessment and Collection of Regulatory Fees for Fiscal Year 2006, 21 FCC Rcd 8092, 8107-08 ¶ 52 (2006)]

**EDS Spectrum Corporation** - Request for waiver of FY 2006 regulatory fee late payment penalty. **Denied** (September 17, 2007) [See 47 C.F.R. §1.1164]

**FiberTower Corporation and ART Licensing Corporation** - Request for refund of application fees. **Granted** (September 17, 2007) [See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 958 (1987); Sirius Satellite Radio, Inc., 18 FCC Rcd 12551 (2003)]

**First National Broadcasting Corporation** - Request for waiver of FY 2004 and 2005 regulatory fee late payment penalty. **Denied** (September 17, 2007) [See 47 C.F.R. § 1.1164; Assessment and Collection of Regulatory Fees for Fiscal Year 2006, 21 FCC Rcd 8092, 8107-08 ¶ 52 (2006)]

**Loma T.V. Club Station K11AD**- Request for waiver of FY 2003 regulatory fee and late payment penalty. **Denied** (August 31, 2007) [See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12761, para. 16 (1995)]

**Lone Star Network KLSN (FM)** - Request for waiver and refund of FY2006 regulatory fee. **Granted** (September 18, 2007) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12,759, 12,762 (1995)]

**Nebraska Rural Radio Association KNEB (AM), KNEB (FM), KTIC (AM) and KWPN (FM)** - Request for waiver of FY 2006 regulatory fees. **Granted** (August 31, 2007) [See 47 C.F.R. §1.1162(c)]

**Ozark KDYN (FM)** - Request for waiver of FY 2006 regulatory fee. **Denied** (August 1, 2007) [See 47 C.F.R. § 1.1164; Assessment and Collection of Regulatory Fees for Fiscal Year 2006, 21 FCC Rcd 8092, 8107-08 ¶ 52 (2006)]

**Reading Broadcasting, Inc. Stations WTVE and WTVE-DT** - Request for waiver of FY 2005 regulatory fee. **Denied** (July 30, 2007) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995)]

**Shoo Fly TV Translator Station Association Station K13FW** - Request for waiver of FY 2003-2007 regulatory fees and late payment penalties. **Granted** (September 17, 2007) [See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12761, para. 16 (1995)]

**Star of the Palm Beaches, Inc. WFLA (AM)** - Request for waiver of FY 2005 regulatory fee late payment penalty. **Denied** (September 17, 2007) [See 47 C.F.R. §1.1164]

**Studio City, LLC Station K284AI** - Request for waiver of FY 2003-2005 regulatory fees. **Denied** (September 17, 2007) [See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year; MD Docket No. 94-19, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12761 para. 16 (1995)]

**NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE REVENUE AND RECEIVABLES OPERATIONS GROUP AT (202) 418-1995.**

Adama

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

SEP 19 2007

OFFICE OF  
MANAGING DIRECTOR

Stuart W. Nolan, Jr., Esq.  
Wood, Maines & Nolan  
1827 Jefferson Place, NW  
Washington, D.C. 20036

Re: Request for Waiver of FY 2006 Regulatory Fee  
Fee Control No. RROG-06-00007875

Dear Mr. Nolan:

This responds to your letter filed September 19, 2006 on behalf of Baldwin Broadcasting Company, D.I.P. (Baldwin Broadcasting), licensee of WZEW (FM), Fairhope, Alabama, requesting waiver of the regulatory fee for Fiscal Year (FY) 2006.<sup>1</sup> You request waiver on the grounds that Baldwin Broadcasting remains in bankruptcy.<sup>2</sup> As indicated below, we grant a waiver of Baldwin Broadcasting's FY 2006 regulatory fee.

In support of your request, you attach a copy of a September 13, 2006 proposed discovery plan submitted to Robert G. Mayer, United States Bankruptcy Judge.<sup>3</sup> Further, at the request of Commission staff, you have provided additional documentation<sup>4</sup> to show that Baldwin Broadcasting's bankruptcy proceedings were still ongoing on September 19, 2006, the regulatory fee deadline.<sup>5</sup>

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<sup>1</sup> Waiver Request from Stuart W. Nolan, Jr., Esq. for Baldwin Broadcasting Company, D.I.P., filed September 19, 2006 (Request) at 1. Your request indicates that a petition for deferral of the fee payment was submitted concurrently with the waiver request, but the Commission has no record of receiving that request.

<sup>2</sup> *Id.*

<sup>3</sup> Attachment to Request, "Defendant's Proposed Discovery Plan," In re: Barry D. Wood, Debtor, Case No. 00-14460-RGM, Chapter 11, U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria Division), from Robert G. Mayer, U.S. Bankruptcy Judge (no actual signature), dated Sept. 13, 2006, at 1-2.

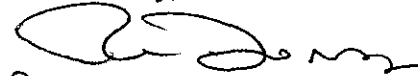
<sup>4</sup> "Amended Notice of Hearing on Debtor's Motion for Approval of Distribution of Funds from sale of WZEW," In re: Barry D. Wood, Debtor, Case No. 00-14460-RGM, Chapter 11, U.S. Bankruptcy Court, Eastern District of Virginia (Alexandria Division), setting forth that a hearing for the titled purpose would be held on April 25, 2007 before that Bankruptcy Court. You also submitted several other documents, none of which were relevant to the time period pertaining to the FY 2006 regulatory fee.

<sup>5</sup> See *Public Notice, Payment Methods and Procedures for Fiscal Year 2006 Regulatory Fees*, 21 FCC Rcd 9514 (2006) (stating that licensees and regulatees must make annual regulatory fees payments by 11:59 PM September 19, 2006); see also *Public Notice, FY 2006 Regulatory Fees Due No Later Than September 19, 2006*, released July 31, 2006.

The Commission will grant waivers of its regulatory fees on a sufficient showing of financial hardship, and evidence of bankruptcy or receivership at the time the fees are due is sufficient to establish financial hardship. *See Implementation of Section 9 of the Communications Act*, 10 FCC Rcd, 12,759, 12761-62 (1995) (waivers granted for licensees whose stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership). Based on the documents that you have submitted concerning Baldwin Broadcasting's bankruptcy status, we will grant Baldwin Broadcasting a waiver of the regulatory fee for WTEZ (FM) for FY 2006.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a stylized flourish at the end.

Mark Stephens  
Chief Financial Officer

**MAINES & NOLAN**  
ATTORNEYS AT LAW  
1827 JEFFERSON PLACE, N.W.  
WASHINGTON, D.C. 20036

7875

BARRY D. WOOD  
RONALD D. MAINES  
STUART W. NOLAN, JR.\*  
\*Admitted in Virginia only

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URMINDER AULAKH  
OF COUNSEL

September 19, 2006

RRG-06-00007875

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**RECEIVED**

SEP 19 2006

Federal Communications Commission  
Office of Secretary

**Attn: Office of Managing Director**

**Re: Baldwin Broadcasting Company, D.I.P.  
WAVH (FM), Daphne, Alabama  
Facility Id No. 3636  
Notification ID: 22678  
Request for Waiver of Regulatory Fee**

Dear Ms. Dortch:

On behalf of our client Baldwin Broadcasting Company, D.I.P. ("Baldwin"), licensee of the above-referenced FM radio station (the "Station"), and pursuant to Section 1.1166 of the FCC's Rules, we hereby request a waiver of regulatory fees associated with the Station with respect to federal fiscal year 2006.

As shown by the enclosed order of the U.S. Bankruptcy Court for the Eastern District of Virginia, Baldwin remains in bankruptcy. Extreme financial hardship on the part of the licensee therefore continues to prevent payment of regulatory fees, including payment subject to a refund pending action by the Commission on this request for a waiver of the fees.

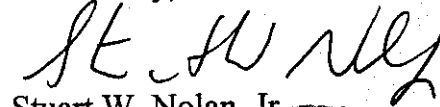
A petition for deferral of the fee payment is being submitted concurrently with the instant waiver request.

Section 1.1166 of the Rules allows the Commission to waive, reduce or defer regulatory fees where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Waiver of the FY 2006 regulatory fees for the Station would promote the public interest by allowing the Station to remain on the air and serve its community of license.

Marlene Dortch  
September 19, 2006  
Page 2

Please call Barry Wood of this firm or the undersigned if you have any questions regarding this matter.

Yours truly,



~~Stuart W. Nolan, Jr.~~

~~Corporate Counsel~~

~~Broadcasting Company, D.P.~~

Enc.

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)**

**In re:**

**BARRY D. WOOD,**

**Debtor.**

**Case No. 00-14460-RGM  
Chapter 11**

**BARRY D. WOOD,**

**Plaintiff,**

**v.**

**CUMULUS BROADCASTING, LLC,**

**Defendant.**

**Adv. Pro. No. 06-01085-RGM**

**DEFENDANT'S PROPOSED DISCOVERY PLAN**

Defendant Cumulus Broadcasting LLC hereby moves the Court to enter the following

Discovery Plan:

1. The parties exchanged their initial disclosures pursuant to Bankruptcy Rule 7026 by June 12, 2006.
2. Discovery may commence immediately and shall be completed by November 17, 2006.

George R. Pitts, Esq.  
VA Bar No. 24978  
Charles E. Luftig, Esq.  
VA Bar No. 68383  
Daniel M. Litt, Esq.  
Admitted *Pro Hac Vice*  
Dickstein Shapiro LLP  
1825 Eye Street NW  
Washington, D.C. 20006  
202-420-2200

*Counsel for Cumulus Broadcasting, LLC*

2141738.01

3. Plaintiff shall designate experts, if any, by September 7, 2006; Defendant shall designate experts, if any, by October 7, 2006; and rebuttal experts, if any, shall be designated by October 22, 2006.

4. A final pre-trial conference shall be held on January 22, 2007 at 9:30 a.m., at which (or before) the parties shall exchange witness lists and exhibit lists, and file exhibits with the Court, in accordance with the Court's Initial Scheduling Order.

5. Summary Judgment Motions, if any, may be filed at any time on or before December 1, 2006, and shall be argued prior to the final pre-trial conference.

IT IS SO ORDERED.

/s/ Robert G. Mayer

Dated: \_\_\_\_\_  
Sep 13 2006

\_\_\_\_\_  
Robert G. Mayer  
United States Bankruptcy Judge  
eod: 9/14/06

SEEN AND AGREED:

\_\_\_\_\_  
/s/ Charles E. Luftig  
George R. Pitts (VA Bar No. 24978)  
Charles E. Luftig (VA Bar No. 68383)  
Daniel M. Litt, Esq. (Admitted *Pro Hac Vice*)  
Dickstein Shapiro LLP  
1825 Eye Street NW  
Washington, DC 20006  
Tel: (202) 420-2200  
Fax: (202) 420-2201  
*Counsel for Defendant Cumulus Broadcasting, LLC*

SEEN AND OBJECTED TO:

\_\_\_\_\_  
/s/ Craig S. Brodsky  
Craig S. Brodsky, Esq. (VA Bar No. 44802)  
Goodell, DeVries, Leech & Dann, LLP  
One South Street, 20th Floor  
Baltimore, MD 21202  
Tel: (410) 783-4014  
*Counsel for Plaintiff Barry D. Wood*



Adana

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

AUG 1 2007

OFFICE OF  
MANAGING DIRECTOR

D. Mark McMillan, Esq.  
Bell, Boyd & Lloyd, LLC  
70 West Madison Street  
Suite 3100  
Chicago, IL 60602-4207

Re: BDHLR, LLC  
Request for Waiver of Filing Fees  
Fee Control No. RROG-06-00007526

Dear Mr. McMillan:

This letter responds to your request filed June 1, 2006 (*Request*), on behalf of BDHLR, LLC (BDHLR), the Disbursing Agent for Disputed Claims Reserve f/b/o Holders of Claims Against Reorganized Enron and Affiliated Debtors (the Reserve) for waiver of the \$15,000.00 fee associated with the untimely filing of the notice informing the Commission of the consummation of the transfer of control of Portland General Electric Company's (PGE's) wireless licenses under Section 310 of the Communications Act, 47 U.S.C. § 310, (Notice of Consummation).<sup>1</sup> Our records reflect that the \$15,000.00 fee has not been paid. For the reasons set forth herein, we grant your request.

You recite that Enron Corp. (Enron) "owned 100 percent of PGE, an FCC licensee."<sup>2</sup> On December 2, 2001, Enron filed petitions for Chapter 11 bankruptcy reorganization in the Southern District of New York.<sup>3</sup> You state that on April 3, 2006, "in accordance with Enron's and other debtor's" Chapter 11 bankruptcy plan [Bankruptcy Plan or the Plan], which was confirmed by the Bankruptcy Court on April 3, 2006, "PGE issued New PGE

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<sup>1</sup> *Request* at 1 (stating that the consummation of the transaction occurred on April 3, 2006, and that the "Notice of Consummation, due to be filed in May 2006," was filed one month late on June 1, 2006); *see also* FCC File Number 0002371767 (authorizing the transfer of control on January 18, 2006).

<sup>2</sup> *Request* at 1.

<sup>3</sup> In an earlier proceeding, as evidence of Enron's bankruptcy, you provided the Commission with orders from the U.S. Bankruptcy Court for the Southern District of New York (Bankruptcy Court), dated December 3, 2001 and August 1, 2002, as well as Enron's petition for bankruptcy, dated December 2, 2001. *See* Letter from Mark A. Reger, Chief Financial Officer (CFO), Office of Managing Director (OMD), FCC to Aileen A. Pisciotto, Esq. (Nov. 19, 2002).

common stock.”<sup>4</sup> You state that “[t]he shares of PGE common stock previously held by Enron were cancelled and PGE ceased to be a subsidiary of Enron.”<sup>5</sup> You say that “[s]hares of New PGE common stock were issued to the Reserve, where the shares are held to be released over time to the Debtors’ creditors holding allowed claims in accordance with the Chapter 11 Plan.”<sup>6</sup> You explain that “[t]he Reserve exists solely for this purpose and is not a for-profit entity that functions essentially as a trust for the benefits of Enron’s creditors . . . . [and that] its only function is to carry out the role assigned to it in the Bankruptcy Plan, . . . . [i.e.,] to release all available assets to the [h]olders of [a]llowed [c]laims in the proper percentages as claims are resolved.”<sup>7</sup> You state that “[w]hen that function is fulfilled, the Reserve will cease to exist.”<sup>8</sup>

You contend that “[r]equiring the Reserve to pay the \$15,000.00 filing fee . . . would penalize the Reserve” and “Enron’s creditors.”<sup>9</sup> You claim that no harm was caused by the late filing because the Notice of Consummation “is a reporting requirement” and “PGE uses its licenses for internal purposes only.”<sup>10</sup> You aver that the “inadvertent” untimely filing was caused by the replacement of the former disbursing agent with BDHLR on April 30, 2006, an event which included “a transition period for an incredibly complicated bankruptcy estate” which was characterized by constant attrition at Enron

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<sup>4</sup> Request at 1; see also *Application to Transfer Control of FCC Wireless Licenses from Enron Corp. to Disputed Claims Reserve f/b/o Holders of Claims Against Reorganized Enron and Affiliated Debtors*, FCC Form 603 (*Transfer of Control Application*), Attachment, *Description of Transaction*, (Attachment One) at 2 (“PGE is not a debtor in the Chapter 11 cases.”)

<sup>5</sup> Request at 1-2.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> See *Transfer of Control Application*, Attachment One at 2 (“the Reserve is a trust/escrow acting as the nominal shareholder for the benefit of [h]olders of [a]llowed and [d]isputed [c]laims.”); see also *id.* (“The Disbursing Agent . . . will be the registered holder of PGE shares on behalf of the Reserve.”); see also *id.* at fn. 1. (“The Disbursing Agent’s duties are ministerial in nature and the Disbursing Agent will not exercise operational control over PGE.”); *id.* (“The roles of the Disbursing Agent and the Reserve are to function as temporary holders for the transfer of New PGE Common Stock to the [h]olders of [a]llowed [c]laims under the Bankruptcy Plan, with the Disbursing Agent acting in a trustee-like role.”); see also generally *id.* at 2 (“An indirect transfer of control over PGE’s . . . FCC licenses will occur as a result of the transfer of control over PGE from Enron to the Reserve.”).

<sup>9</sup> Request at 2.

<sup>10</sup> *Id.*

among the individuals involved in the FCC application process.<sup>11</sup> You assert that the *Notice of Consummation* was filed shortly after BDHLR became aware of the omission and that BDHLR will ensure that similar filings in the future are made on a timely basis.<sup>12</sup>

The Commission has discretion to waive or defer filing fees upon a showing of good cause and a finding that the public interest will be served thereby.<sup>13</sup> We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances."<sup>14</sup> The Commission recognized that in certain instances payment of a fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its fees in those instances where a petitioner presents a "compelling case of financial hardship."<sup>15</sup> The Commission has determined that evidence of bankruptcy is sufficient to establish financial hardship for purposes of waiver of application filing fees.<sup>16</sup> The Commission stated that "waiver of the [filing] fee will serve the public interest by enabling [the licensee undergoing Chapter 11 reorganization in bankruptcy] . . . to preserve assets that will accrue to innocent creditors."<sup>17</sup>

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<sup>11</sup> Request at 2.

<sup>12</sup> *Id.*

<sup>13</sup> See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

<sup>14</sup> See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, paras. 70, 87-88 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

<sup>15</sup> See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon.*, 10 FCC Rcd 12759 (1995) (*Implementation of Section 9 Reconsideration*) (*Regulatory Fee Reconsideration*).

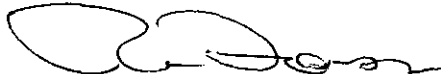
<sup>16</sup> See *MobileMedia Corporation*, 14 FCC Rcd 8017, 8027 (1999) (*MobileMedia Corporation*); see also *Regulatory Fee Reconsideration* at 12762 ("we will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership"); *id.* ("where a bankruptcy trustee, receiver or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee").

<sup>17</sup> See *MobileMedia Corporation* at 8027.

We find that the circumstances at issue here demonstrate good cause for waiver of the \$15,000.00 filing fee. The record shows that in accordance with implementation of the Enron Bankruptcy Plan, the bankrupt Enron transferred control of PGE (the holder of the instant licenses) to the Reserve, whose ownership of the PGE shares is nominal and whose sole function under the Plan is to act as a trust/escrow for the benefit of Enron's creditors. Although neither the Reserve nor PGE is bankrupt – indeed, the Bankruptcy Plan has become effective – a waiver of the fees under the facts of this case will serve the public interest by enabling the Reserve to preserve PGE's assets, including the licenses at issue here, to the benefit of the innocent creditors of Enron. Although normally we would require an entity not in bankruptcy to make a specific showing of financial hardship demonstrating insufficient funds from which to pay the fees, in the unusual circumstances here, where the Reserve did not come into existence until the Bankruptcy Plan became effective, is not a profit-making entity, exists solely to carry out its assigned role under the Bankruptcy Plan to act as a trustee and Disbursing Agent for the benefit of Enron's creditors, and will cease to exist once this assignment is fulfilled, we see no reason to require a further showing of hardship. Accordingly, we find that the facts of this case provide extraordinary and compelling circumstances sufficient to warrant a waiver of the \$15,000.00 filing fee in connection with the Notice of Consummation. We therefore grant your request.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark Stephens  
Chief Financial Officer

## BELL, BOYD &amp; LLOYD LLC

70 West Madison Street, Suite 3100 • Chicago, Illinois 60602-4207  
312.372.1121 • Fax 312.827.8000

June 1, 2006

FO WAIVER TRACKING

CNTL# \_\_\_\_\_

**By Hand**

Anthony Dale  
Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 1A625  
Washington, DC 20554

RECEIVED - FC ;

JUN - 1 2006

Federal Communication Commission  
Bureau / Office

Dear Mr. Dale,

Pursuant to Section 1.1117 of the Federal Communications Commission's ("Commission's" or "FCC's") regulations, 47 C.F.R. § 1.1117, I am writing as attorney for BDHLR, LLC ("BDHLR"), the Disbursing Agent for transferee Disputed Claims Reserve f/b/o Holders of Claims Against Reorganized Enron and Affiliated Debtors (the "Reserve"), to request waiver of the Commission's filing fees for the Notice of Consummation informing the Commission that the transaction authorized on January 18, 2006 in FCC File Number 0002371767 was consummated on April 3, 2006. That Notice of Consummation, due to be filed in May 2006, is being filed out-of-time.

BDHLR plans to file a Notice of Consummation with the Commission today, once it has submitted this letter respectfully requesting waiver of the filing fee associated with the Notice of Consummation. The Commission will not need to take any action as a result of the Notice of Consummation submittal today. Instead, the Notice of Consummation is being submitted to report to the Commission the consummation of a transaction that resulted in a transfer of control of Portland General Electric Company's ("PGE's") wireless FCC licenses under Section 310 of the Communications Act. In File No. 002371767, the Commission authorized the underlying transaction.

As you are aware, there is typically no filing fee associated with the filing of a Notice of Consummation relating to the transfer of control of FCC wireless licenses. However, in this instance, there is a filing fee of approximately \$15,000 because the Notice of Consummation was not filed within the required 30 day window (which ended in May 2006). As explained below, a number of factors contributed to the inadvertent delay in filing.

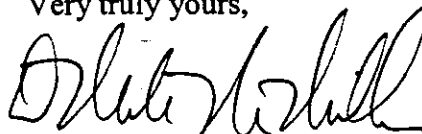
The Reserve is a single-purpose, non-profit entity and is in an unusual position. As background, Enron Corp. ("Enron") owned 100% of PGE, an FCC licensee. In accordance with Enron's and other debtor's (collectively, "Debtors") Chapter 11 Bankruptcy Plan, confirmed by the Bankruptcy Court in the Debtors' Chapter 11 bankruptcy proceeding, on April 3, 2006, PGE issued New PGE common stock, which commenced trading on the New York Stock Exchange. The shares of PGE common stock previously held by Enron

were cancelled and PGE ceased to be a subsidiary of Enron. Shares of New PGE common stock were issued to the Reserve, where the shares are held to be released over time to the *Debtors' creditors holding allowed claims in accordance with the Chapter 11 Plan*. The Reserve exists solely for this purpose and is not a for-profit entity that functions essentially as a trust for the benefits of Enron's creditors. Any penalty to the Reserve is essentially a penalty on Enron creditors. A copy of the underlying FCC Form 603, including the Bankruptcy Court's order confirming the Bankruptcy Plan, is attached hereto. The Reserve did not exist until the Bankruptcy Plan became effective and its only function is to carry out the role assigned to it in the Bankruptcy Plan. The Reserve's role is to release all available assets to the Holders of Allowed Claims in the proper percentages as claims are resolved.

Requiring the Reserve to pay the \$15,000 filing fee in this instance would penalize the Reserve and the penalty is unwarranted. No harm was caused to the FCC or to the public as a result of the Notice of Consummation being submitted several weeks late. The Commission will not need to take any additional action as a result of the Notice of Consummation being filed June 1 rather than in May because the Notice of Consummation is a reporting requirement. With respect to the public interest, PGE does not have any communications customers that needed to be informed that the transfer of control over PGE licenses had been consummated. PGE uses its licenses for internal purposes only. In addition, the out-of-time submission of the Notice of Consummation was not a reflection of the Reserve's misconduct. Instead, it was inadvertent. One of the factors that contributed to the several week delay in filing is that the Disbursing Agent for the Reserve changed in April. BDHLR replaced Stephen Forbes Cooper LLC, the former Disbursing Agent for the Reserve, as of April 30, 2006. The weeks leading up to this replacement, and the weeks immediately following the consummation, were a transition period for an incredibly complicated bankruptcy estate. In addition, there is constant attrition at Enron (the transferor), and the individuals involved in the FCC application process from within Enron were no longer Enron employees by the time the transaction actually closed. Finally, the Notice of Consummation filing is being made very shortly after BDHLR became aware of the omission. BDHLR will coordinate closely with its attorneys to ensure that similar filings in the future are made on a timely basis.

I believe these special circumstances warrant a deviation from the general rule and that such a deviation will serve the public interest. Because the Reserve is not a profit-making venture, serving only to benefit the Debtors' creditors, in this instance the penalties would have a significant impact on the filing entity.

Very truly yours,



D. Mark McMillan

Counsel to BDHLR, LLC

Adams

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 18 2007

OFFICE OF  
MANAGING DIRECTOR

Andy Hammons  
Senior Director  
Cbeyond Communications, LLC  
320 Interstate North Parkway  
Suite 300  
Atlanta, Georgia 30339

Re: Cbeyond Communications, LLC  
Request for Waiver of FY 2006  
Regulatory Late Fee  
Fee Control No. 0702088340500001

Dear Mr. Hammons:

This responds to your March 19, 2007 inquiry disputing assessment of the penalty for late payment of the fiscal year (FY) 2006 regulatory fee for Cbeyond Communications, LLC (Cbeyond), Atlanta, Georgia.<sup>1</sup> On March 14, 2007, we denied a previous request for waiver of the late penalty on behalf of Cbeyond.<sup>2</sup> Our records reflect that the FY 2006 regulatory fee penalty in the amount of \$12,503.93 has been paid. For the reasons set forth below, your request is denied.

In your Inquiry, you state that Commission staff told Cbeyond that its "account was fine," that "there was no outstanding payment due," and that there was no "showing for the Form 159-W Regulatory Fee."<sup>3</sup> You state that Cbeyond did "extensive diligence in calling and emailing the FCC for several months to pay [the regulatory fee]," and that if Cbeyond "had not proactively pursued the FCC on this matter [its] system would never have shown a payment due, and Cbeyond would never have had to pay the regulatory fee."<sup>4</sup> You further state that, "however, [Cbeyond] always want[s] to pay what is owed and so [it] diligently acted to do so."<sup>5</sup> For these reasons, you believe it is inappropriate for Cbeyond to be charged a late penalty.

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<sup>1</sup> Inquiry from Andy Hammons to FCC (March 19, 2007) (facsimile) (Inquiry).

<sup>2</sup> Letter from Mark A. Stephens, Chief Financial Officer, FCC to Craig Neeld, Compliance Reporting Specialist, Technologies Management, Inc. (March 14, 2007) (Response).

<sup>3</sup> Inquiry.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

As we advised in our previous Response, the Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner. 47 U.S.C. § 159(c)(1). It is the obligation of the licensee responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.<sup>6</sup> Your request does not indicate or substantiate that you met this obligation. Nor does the statute permit the Commission to remove this obligation even under circumstances, such as those you recite, where you apparently received information that was confusing or inconsistent with the Commission's published rules. Further, Commission licensees are expected to know and understand the requirements and rules governing their licenses.<sup>7</sup> Therefore, your request is denied.

Cbeyond's regulatory fee obligations are established by the Communications Act and the Commission's Report and Order and Public Notices identifying the due date and other pertinent information. The Commission informs its licensees of due dates, fee amounts, and payment methods in Public Notices and Fact Sheets, all posted on the Commission's web site. Thus, any information to the contrary that may have been provided by informal staff contacts cannot serve as a basis for the Commission to waive the late payment penalty that is made obligatory by federal law.<sup>8</sup> In this case, Cbeyond apparently relied on information obtained informally from Commission staff and the absence of a regulatory fee bill to delay payment of its FY 2006 regulatory fee. While we appreciate Cbeyond's efforts to resolve this matter, we note that Cbeyond could have avoided assessment of the late payment penalty by making timely payment of the regulatory fee based on the numerous official sources that the Commission uses to inform its licensees of their regulatory fee obligations.<sup>9</sup>

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<sup>6</sup> See 47 C.F.R. § 1.1164; *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd 8092, 8107-08, ¶ 52 (2006).

<sup>7</sup> Among other things, the Commission issued Public Notices announcing the due date for payment of fees. *Public Notice*, July 31, 2006; *Public Notice*, DA 06-1661, August 21, 2006. The Commission also informs licensees of due dates and other pertinent payment information on its website. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, 21 FCC Rcd 8092, 8101 ¶ 28 (2006).

<sup>8</sup> See, e.g., Letter from Mark A. Reger, CFO, OMD, FCC, to Robert Namer (Apr. 20, 2004) (denying a request for waiver of the late payment penalty associated with the FY 2003 regulatory fee where the Commission's website and staff provided inaccurate information regarding the licensee's fee obligations; stating that "licensees are expected to know and understand the requirements and rules governing their licenses" and noting that the Commission had adopted a Report and Order revising its regulatory fees for FY 2003, published it in the Federal Register, posted the decision on the Commission's website, and issued Public Notices announcing the due date for payment of the fees; determining that "any information to the contrary provided on our website or by informal staff contacts cannot serve as a basis for the Commission to waive the late charge penalty that is made obligatory by federal law").



Andy Hammons, Senior Director

3.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Stephens', with a stylized, flowing script.

Mark A. Stephens  
Chief Financial Officer

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<sup>9</sup> As we advised in our March 14, 2007 Response, the Commission takes great care to inform its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, [www.fcc.gov](http://www.fcc.gov). This information includes specific instructions for ITSP providers such as Cbeyond. *See Response* at 2.



## RAMIS ACCOUNT RECEIVABLES

### Receipt Processing Voucher

#### Header Details :

Fee Control Number : 0703278340561001  
Customer FRN : 0005021506  
Customer Name : Technologies Management, Inc.  
CD Number : 784853 Date Received : 3/23/07  
Type Collection : FEE CD Date : 3/27/07  
Payment Type : CHECK Transaction Date : 3/23/07  
Receipt Amount : \$12,503.93

#### Payer Details :

Payer FRN : 0005021506 Payer Name : CBeyond COMMUNICATIONS  
Payer TIN : Address :  
Check No :  
Credit Card No : 0000000000000000  
Transit Routing :

#### Line Details :

Seq	Applicant FRN	Applicant Name	App. TIN	Call Sign	Fcc Code 1	Fcc Code 2	PTC	Qty	Applied Amt
1	0003759602						0699		\$12,503.93

Total : \$12,503.93

8402

CBEYOND  
COMMUNICATIONS

0702088340500001

## FACSIMILE TRANSMITTAL SHEET

TO: EVELYN

DATE: 03/19/2007

COMPANY: FCC

FROM: Andy Hammons

FAX NUMBER: 202-418-7869

SENDER'S FAX NUMBER:

PHONE NUMBER:

SENDER'S PHONE NUMBER:  
678-370-2534

CC:

# OF PAGES INCLUDING COVER: 6

☐ URGENT ☐ FOR REVIEW  
RECYCLE☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE

Dear Evelyn,

Attached is the response from the FCC, as well as the email that was sent to request abatement of the penalty. What was not noted in the email request was the fact that the FCC told us that our account was fine, and that there was no outstanding payment due or showing for the Form 159-W Regulatory Fee. Cheyond did extensive diligence in calling and emailing the FCC for several months to pay this, and thus we believe it is inappropriate to charge us a penalty. If we had not proactively pursued the FCC on this matter your system would never have shown a payment due, and Cheyond would never have had to pay the regulatory fee; however, we always want to pay what is owed and so we diligently acted to do so.

I believe the reason the account is not showing as owing the penalty right now may be that the FCC has already "taken" this \$12,503.93 from our E-Rate reimbursements, which has caused further problems for our customers. Please get back with me on this matter as soon as possible, and I am hopeful that you can work internally to see that this penalty is reversed (abated), and our accounts cleaned up.

Thank you.

  
Andy Hammons

Sr. Director

[Andy.hammons@cbeyond.net](mailto:Andy.hammons@cbeyond.net)

8402

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
REGINA DORSEY, SPECIAL ASST TO CFO

OFFICE OF  
MANAGING DIRECTOR

Craig Neeld  
Compliance Reporting Specialist  
Technologies Management, Inc.  
210 N. Park Ave.  
Winter Park, FL 32789

Re: Cbeyond Communications, LLC  
FY 2006 Regulatory Fee  
Fee Control No. 0702088340500001

Dear Mr. Neeld:

This responds to your request dated February 2, 2007 (*Request*), filed on behalf of Cbeyond Communications, LLC (Cbeyond) for a waiver of the penalty for late payment of the fiscal year (FY) 2006 regulatory fee. Our records reflect that Cbeyond has paid the \$50,015.70 FY 2006 regulatory fee, but not the \$12,503.93 late penalty. As explained below, we deny your request.

You recite that Cbeyond "received its 2006 Interstate Telecommunications Service Provider [ITSP] regulatory fee bill on February 1, 2007."<sup>1</sup> You state that "[t]his invoice was not generated in 2006, and was only released when its absence was questioned by [Cbeyond]."<sup>2</sup> You assert that FCC staff advised you on January 25, 2007, that the "invoice was not generated due to an error in the FCC's billing system . . . [and that] once the error was corrected, the invoice was generated."<sup>3</sup> You claim that the late penalty is "inappropriate" because "the late payment is due to the FCC's error of not generating a timely invoice[.]"<sup>4</sup>

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.<sup>5</sup> The Commission's rules provide that a timely payment is one received at the Commission's lockbox bank by the due date.<sup>6</sup> It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not

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<sup>1</sup> *Request* at 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 47 U.S.C. §159(c)(1).

<sup>6</sup> 47 C.F.R. §1.1164.

Mr. Craig Neeld

2.

indicate or substantiate that Cbeyond met this obligation with respect to the FY 2006 regulatory fee. Although Cbeyond may have relied upon receiving a bill from the Commission in paying the FY 2006 regulatory fee, this does not support a waiver of the late charge penalty. The Commission takes great care to inform its licensees of the due dates, amounts of the fees, and payment methods in public notices and fact sheets, which information it also posts on its web site, [www.fcc.gov](http://www.fcc.gov). For the FY 2006 regulatory fees, the Commission timely released several public notices and news releases informing licensees of the September 19, 2006 deadline for filing regulatory fees and explaining how to calculate the ITSP regulatory fee, and posted these items on its web site.<sup>7</sup> The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."<sup>8</sup> Accordingly, we deny your request for waiver of the penalty for late payment of the fiscal year 2006 regulatory fee.

Payment of Cbeyond's \$12,503.93 penalty for late payment of the FY 2006 regulatory fee is now due. The late charge penalty should be submitted, together with a Form 159 (copy enclosed), within 30 days of the day of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Stephens  
Chief Financial Officer

Enclosure

<sup>7</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Report and Order*, 21 FCC Rcd 8092 (2006); Public Notice, *FY 2006 Regulatory Fees Due No Later Than September 19, 2006*, 2006 WL 2129092 (July 31, 2006) (announcing the September 19, 2006 filing deadline and stating that late payments will be assessed a 25 percent late payment penalty); Public Notice, *Fee Filer Now Available for 2006 Regulatory Fees*, DA 06-1661 (Aug. 21, 2006) (reminding of filing deadline); *Regulatory Fees Fact Sheet, What You Owe - Interstate Telecommunications Service Providers (ITSP) for FY 2006* (Aug. 2006) (stating "that there is a penalty for not submitting the entire fee in a timely manner" and providing instructions for calculating and paying the FY 2006 regulatory fee, with specific instructions for those who did not receive a bill).

<sup>8</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

Adamo

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
SEP 17 2007

OFFICE OF  
MANAGING DIRECTOR

Sylvia Hodges  
FCC Licensing Coordinator  
Electronic Data Systems Corp.  
5400 Legacy Drive  
MS: H5-1C-41  
Plano, TX 75024

Re: EDS Spectrum Corporation  
Request for Waiver of Late Payment Penalty  
for FY 2006 Regulatory Fees  
Fee Control No. 070611883525500

Dear Ms. Hodges:

This is in response to your request dated May 15, 2007 (*Request*), for waiver of the penalty for late payment of the Fiscal Year (FY) 2006 regulatory fee, filed on behalf of EDS Spectrum Corporation (EDS). Our records reflect that you have paid the \$1,505.00 regulatory fee at issue here, as well as the \$376.25 penalty. For the reasons stated herein, we deny your request.

You recite that the check in payment of the regulatory fee and the associated FCC Form 159, Remittance Advice (*Form 159*), were mailed on September 12, 2006.<sup>1</sup> In support, you submit a copy of the *Form 159* dated September 11, 2006, and a copy of a check from EDS made payable to the Federal Communications Commission in the amount of \$1,050.00 and dated September 9, 2006. You state that EDS's "accounting department notified [you] . . . in 2007 that the FCC had never cashed the EDS 2006 payment check for \$1,505.00 for the regulatory fees" and that "[a]fter researching with the FCC, it was discovered that the FCC had not processed this payment and the check was lost."<sup>2</sup> You assert that "[t]he FCC did not show EDS in arrears for any payments due in 2006 . . . and[,] therefore, EDS was not notified that the fees were in arrears."<sup>3</sup>

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<sup>1</sup> *Request* at 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* ("EDS was not aware that the fee was not processed and the FCC did not show nonpayment on the FCC log").

The Communications Act of 1934, as amended (the Act), requires the Commission to assess a late payment penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.<sup>4</sup> Your assertion that EDS mailed the FY 2006 regulatory fee payment along with the associated *Form 159* on September 12, 2006, provides neither proof that the Commission received the regulatory fee payment by the September 19, 2006, filing deadline nor, under the circumstances, support for a waiver of the late payment penalty. With respect to your claim that "the check was lost[.]" as the Commission stated in *Aerco Broadcasting Corp.*, 16 FCC Rcd 15042, 15043 (2001), section 1.1158 of the Commission's rules

permits payment of regulatory fees in forms that would not be affected by extrinsic factors, such as the uncertainties associated with the timing of mail delivery or the possibility of approaching weather conditions that might slow delivery. [Footnote omitted.] The rules allow electronic transfer of funds, thus providing greater certainty of timely delivery. This permits licensees to account for individual circumstances in choosing how to meet their obligations to make payment in a timely manner.

Because the Commission's rules permit payment of regulatory fees by methods other than mailing, including accessible methods such as electronic transfer,<sup>5</sup> your conjecture that EDS's check was lost fails to establish the extraordinary circumstances that would justify a waiver of the penalty for late payment of the FY 2006 regulatory fee. Further, your claim that the Commission's records did not indicate that EDS was delinquent in paying its FY 2006 regulatory fee provides no basis for a waiver of the late payment penalty given that the Act requires the Commission to assess a penalty on regulatory fees not paid in a timely manner. Because your request does not indicate or substantiate that EDS submitted the FY 2006 regulatory fee by the September 19, 2006, filing deadline, we deny your request for waiver of the late payment penalty.<sup>6</sup>

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<sup>4</sup> See 47 C.F.R. §1.1164.

<sup>5</sup> Additional information regarding payment by electronic transfer can be found at <http://www.fcc.gov/fees/electran.html>.

<sup>6</sup> Our records indicate that a Form 159 and check for the fee and penalty, both dated May 15, 2007, were received on June 8, 2007.

Sylvia Hodges, FCC Licensing Coordinator

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If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", with a stylized flourish at the end.

Mark Stephens  
Chief Financial Officer



0706118835255001

8713

ELECTRONIC DATA SYSTEMS CORP.  
FCC LICENSING COORDINATOR  
5400 LEGACY DRIVE  
MS: H5-1C-41  
PLANO, TX 75024

To: Managing Director  
FCC  
Telephone: 888-225-5322

From: *Sylvia Hodges*  
FCC Licensing Coordinator  
Fax: 972-604-5610 (8-834)  
Telephone: 972-796-6735 (8-836)

Date: 5-15-2007  
Page(s): 7 (including cover)

Subject: Request for Waiver of Late Fee/ EDS Spectrum FCC 2006 Regulatory Fee

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This is a request for waiver of \$376.25 late fee (see attachment) submitted for EDS Spectrum 2006 Regulatory Fees.

Attached is the FCC Form 159 along with a copy of the EDS check # 273076 that was mailed to the FCC on 9-12-06 in payment for EDS Spectrum Corporation's 2006 FCC Regulatory Fees.

Our accounting department notified me in 2007 that the FCC had never cashed the EDS 2006 payment check for \$1505 for the regulatory fees. After researching with the FCC, it was discovered that the FCC had not processed this payment and the check was lost. The FCC did not show EDS in arrears for any payments due in 2006.

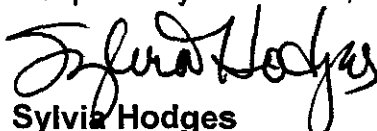
As a result, EDS has resubmitted the 2006 FCC Regulatory Fee payment (see attachment) which includes the regulatory fee of \$1505 plus a late fee of \$376.25.

This waiver is requesting the reimbursement of the late fee charge of \$376.25, because EDS was not aware that the fee was not processed and the FCC did not show nonpayment on the FCC log and therefore, EDS was not notified that the fees were in arrears.

Please give consideration to this request for reimbursement of the late fee charge.

Thank you and call if you have any questions.

Respectfully submitted,

  
Sylvia Hodges